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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 76/572,253
For the Boston Round Bottle mark
Published in the Official Gazette on (Date) 3/18/2005

TRIFOREST ENTERPRISES INCORPORATED
v.
NALGE NUNC INTERNATIONAL CORPORATION

NOTICE OF OPPOSITION

BOX TTAB FEE
Mail Stop TTAB FEE
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Commissioner:

Opposer:
TriForest Enterprises, Inc.
17 Musick
Irvine, CA 92618

Applicant:
Nalge Nunc International Corporation a Delaware Corp.
75 Panorama Creek Drive
Rochester NEW YORK 14602-0365

The above-identified opposer entity believes that it/he/she will be damaged by registration of the mark shown in the above-identified application of Nalge Nunc International Corporation (hereafter 'Nalgene'), and hereby opposes the same. The grounds for opposition are as follows:

This notice of opposition is meant only to plead ultimate facts rather than present a detailed analysis of the opposition itself. However, the following arguments are helpful in understanding the focus of the opposition.

The 76572253 mark is functional and does not have secondary meaning. In fact, when one looks at the bottle it is simply a Boston Round, which has been in the marketplace for many years. The particular shape and ornamental features of the bottle is more properly addressed by a design patent that has a monopoly lifetime of only 14 years rather than a trademark which would grant an unlimited monopoly. Prior registration number 2755757 also suffers the same defects, but is not at issue in this notice of opposition.

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If the 76572253 mark is allowed to be registered, the applicant Nalgene would have a monopoly on the traditional Boston Round. This would hurt everyone in the industry, including the opposer, but would benefit the applicant Nalgene.

The general shape of the bottle is very generic.

The application describes the mark as:

The mark consists of a plastic water bottle as shown, namely, a plastic water bottle having a transparent, generally cylindrical container body with rounded shoulders interconnecting the upper and lower extremities of a cylindrical sidewall to a relatively narrow container neck and a generally flat, circular container bottom, respectively; an opaque screw cap releasably engaged with threads on the upper portion of the neck and having a button connected to the center of its top surface via a short stem; and a strap terminating in small and large annular rings respectively encircling the button stem and the lower portion of the neck such that the large annular ring is spaced apart and visually distinct from the screw cap, wherein the ratio of the diameter of the generally cylindrical container body to the overall height of the water bottle is approximately 0.4 and the ratio of the height of the generally cylindrical container body extending between the neck and the container bottom to the overall height of the water bottle is approximately 0.8.

This description of the mark sounds more like a utility patent claim than a trademark description. To illustrate, one can easily edit the mark description so that it reads like a patent claim. The edited patent claim is as follows:

I Claim: ~~The mark consists of~~

~~a plastic water bottle as shown, namely, a plastic water bottle having~~ comprising: a transparent, generally cylindrical container body with rounded shoulders interconnecting the upper and lower extremities of a cylindrical sidewall to a relatively narrow container neck and a generally flat, circular container bottom, respectively;

an opaque screw cap releasably engaged with threads on the upper portion of the neck and having a button connected to the center of its top surface via a short stem;

and a strap terminating in small and large annular rings respectively encircling the button stem and the lower portion of the neck such that the large annular ring is spaced apart and visually distinct from the screw cap, wherein the ratio of the diameter of the generally cylindrical container body to the overall height of the water bottle is approximately 0.4 and the ratio of the height of the generally cylindrical container body extending between the neck and the container bottom to the overall height of the water bottle is approximately 0.8.

Allowing the applicant a trademark right over this particular claim, would effectively allow a utility patent of unlimited duration for the bottle configuration claim as rewritten above. That is entirely unfair and would damage the opposing party as well as many in the industry.

Particularly, we should look at the elements of the claim to find public domain features.

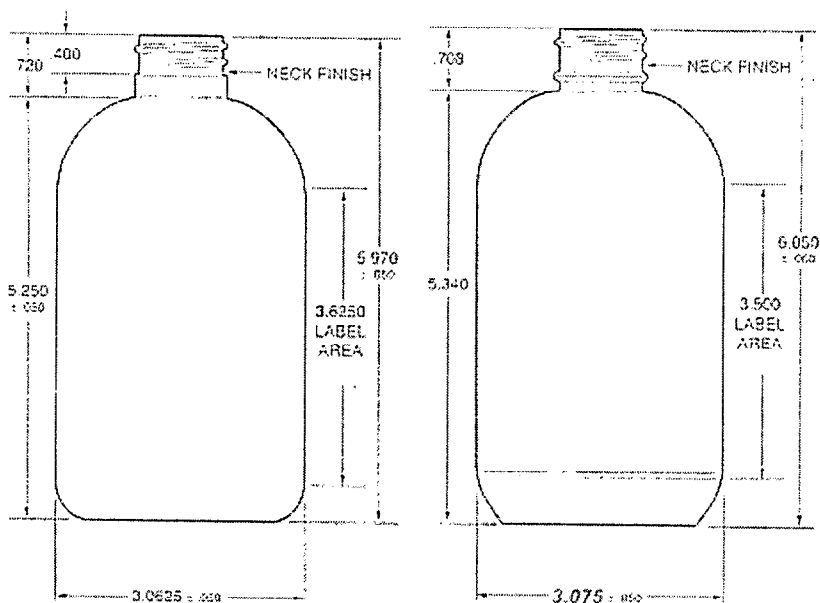
The first element of the claim relates to the shape, generally known as the "Boston Round". This bottle has been around since early 1960's. There are many companies such as Owens-Illinois, and Brockaway Glass who have been manufacturing such bottles. If one takes a look on the Internet, the first mention of the design is as early as 1982.

The Owens-Illinois website,
<http://www.o-i.com/pkg solutions/healthcaremed/healthcare/glasspkgoverview.asp>
shows the Boston round.

Additionally, the following links have the illustration of the Boston Round bottles.

www.bomatic.com/Catalog/boston_pvc_18oz.html

www.mayfairplastics.com/drawings/Boston16a1.gif



Material: HDPE
 Neck Finish: 28/410
 Weight: 30 grams
 Bulk Pack: 175 Box w/Liner
 Box Size: 23 x 15 7/16 x 29 7/8 in.
 Box Weight: 15 lbs.

S.P.I. Tolerances Apply
 Unless Otherwise Noted

The applicant also sells this type of bottle and would be injured if the application were registered.

The second element of the claim is an opaque screw cap with a button, which is also highly common. The button is necessary to connect the tether in swivel configuration to the cap.

The third element of the claim is the strap terminating in small and large annular rings. Opposer has filed a utility patent application for the connector "tether" and opposer's bottle is also sold to the same customers. The idea of connecting a string to a cap is not a new one. Many water bottles, canteens, and children's drinking vessels have connecting chains, strings and tethers on them to prevent loss of the caps. Nalgene is trying to register an obvious idea that has been around for some time. The connection of a tether to a Boston round bottle is necessary. The round profile contributes substantially to the strength of the bottle.

The connecting tether prevents a user from inadvertently losing the cap. The lower annular ring is configured to retain the tether against the cap and the upper annular ring is configured to allow a shrinkwrap machine to shrinkwrap the top of the cap to the bottle.

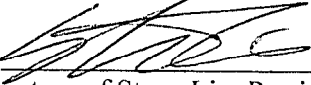
The overall height of the water bottle and the ratio of the height of the container body extending between the neck and the container bottom to the overall height of the water bottle are established by standard sizes in the marketplace. The ratios are commercially necessary so that

the bottles will fit into standard laboratory machines, packaging machines, and related bottle holders.

The highly functional nature of the claimed trademark suggests that the bottle does not have secondary meaning. There's nothing distinctive about any of the features listed. The features are very common and highly desirable functional characteristics that improve the strength, and ease of use of the bottle.


Therefore, the opposition prays that the applicant be denied registration.

By my signature below I declare under the penalty of perjury that the above statements and documents submitted are true and accurate to the best of my knowledge.

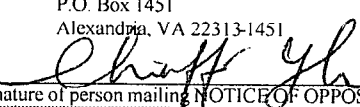
X:  Date: Jun 29, 2005
Signature of Steve Lin, President
TriForest Enterprises, Inc.
17 Musick
Irvine, CA 92618
Fax 949.380.9955

This notice is being submitted in triplicate (original plus two copies) as required by 37 CFR 2.102(d). This notice includes check #5437 for \$300 pursuant to fee code 6402/7402 and CFR 2.6(a)(17); and return card.

Respectfully submitted,

By Clement Cheng:  Date: 6/30/2005
Law Offices of Clement Cheng
17220 Newhope St., Suite 127
Fountain Valley, CA 92708
Phone: 714-825-0555

Attorney for Opposer

I certify that today 7/1/05 (date), which is the date I am signing this certificate, this correspondence and all listed attachments are being deposited with the United States Postal Service and is addressed to:
Mail Stop TTAB FEE
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
X: 
Signature of person mailing NOTICE OF OPPOSITION

PROOF OF SERVICE

In the matter of trademark application Serial No. **76/572,253**

I, the undersigned, declare I am over the age of 18 and not a party to this action. My business address is at 17220 Newhope St., Suite 127 Fountain Valley, CA 92708.

On June 27, 2005, I served:

NOTICE OF OPPOSITION

By placing true copies thereof in a sealed envelope, addressed as follows to:

1 copy sent to:

DONALD F. FREI
WOOD, HERRON & EVANS, L.L.P.
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202-2917
ATTORNEY FOR APPLICANT

3 copies sent to:

Mail Stop TTAB FEE
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

- ☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of the addressee(s).
- ☒ BY MAIL: I am readily familiar with the practice of the office for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is put in the office outgoing mail tray for collection and is deposited in the U.S. Mail that same day in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing shown on this proof of service.
- ☒ FEDERAL: I declare under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- ☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2005, at Fountain Valley, California.


signer